

**REMARKS**

Claims 9, 11, 12, 14, 18, 20, 21 and 23-26 have been amended. Claims 1-8, 13, 16-17, 22 and 27 have been canceled without prejudice and with the understanding that Applicants may pursue the subject matter encompassed by these claims in a future application. Dependent claims 9 and 18 have been placed in independent format through incorporation of the subject matter of independent claims 1 and 16, now canceled, from which they respectively depended. Claims 11, 12, 14, 20, 21 and 23-26 have been amended to place them in a format that better conforms to U.S. patent prosecution practice. More specifically, the term “when” in claims 11 and 20, and the term “which” in claims 12 and 21 have been replaced with “wherein the composition” to add clarity. The use claims 14 and 23 have been reformatted to composition claims. Claims 25 and 26 have been amended to clarify that it is the medicament that comprises an extract. No new matter has been added by any of these amendments. After entry of the amendments, claims 9-12, 14, 15, 18-21 and 23-26 will be pending.

***I. THE REJECTION UNDER OBVIOUSNESS-TYPE DOUBLE PATENTING***

**A.** Claims 9-12, 14, 15, 18-21 and 23-26 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent 6,376,657 (“the ‘657 patent”).

Applicants believe that this rejection was already fully addressed in the previously filed response of August 11, 2003 by the filing of a terminal disclaimer relative to the ‘657 patent. The Examiner even acknowledges this filing in the preliminary statements of the current Office Action. Therefore, Applicants request that this ground for rejection be withdrawn for having been previously addressed. With no further rejections being cited in this Office Action against them, claims 9-12, 14, 18-21, 23, 25 and 26 should now be in condition for allowance.

**B.** Claims 15 and 24 have been provisionally rejected under obviousness-type double patenting as being unpatentable over claims 122 and 130 of commonly assigned, copending application 10/170,750.

Applicants believe that claims 122 and 130 in copending application 10/170,750 are in condition for allowance. Therefore, once claims 122 and 130 have been indicated as allowed, Applicants will cancel claims 15 and 24 in the present application. Cancellation of these claims would effectively moot this ground for rejection.

## **II. THE REJECTION UNDER 35 U.S.C. § 103(a)**

The Examiner maintains his rejection of claims 1-8, 16 and 17 under 35 U.S.C. 103(a) as being unpatentable over Chem. Pharm. Sci. Bull. 30(10), 3500-4 (1982) to Wada *et al.* (“Wada”) in view of Bot. Jahrb. Syst. 115(2), 145-270 (1993) to Bruyns (“Bruyns”), and now includes claim 27 under this rejection.

Applicants do not agree with the Examiner’s assessment of the teaching of *Wada* in view of *Bruyns* as it relates to Applicants’ claimed invention. However, in order to expedite prosecution of this application, Applicants have canceled claims 1-8, 16, 17 and 27 without prejudice, thus mooting this ground for rejection.

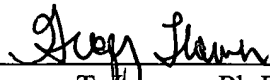
## **III. CONCLUSION**

Applicants believe that all grounds for rejection have been fully addressed and that the subject application is now in condition for allowance. Should the Examiner feel that there are any issues outstanding after consideration of this amendment, the Examiner is invited to contact Applicants’ undersigned representative to expedite prosecution.

**EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or to credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTION PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Dated: **May 5, 2004**  
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Respectfully submitted,  
**Morgan, Lewis & Bockius LLP**

  
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